

### **REMARKS - General**

In lieu of the Examiner's thoughtful and concise assessment of the submitted application, applicant has amended all claims to define the invention more particularly and distinctly so as to overcome the technical rejections cited by the Examiner and define the invention patentably over the prior art.

#### **The Claims Rejection Of Claim 3 Under 35 U.S.C. § 101**

Claim 3 was rejected under § 101 because the claimed invention is directed to non-statutory subject matter and is directed to neither a "process" nor a "machine," but rather embraces or overlaps two different statutory classes of invention.

Applicant requests reconsideration and withdrawal of this rejection upon examination of the re-written claim in which the overlap of the statutory classes of invention has been corrected.

#### **The Claims Rejection Of Claims 1-6 Under 35 U.S.C. § 112**

Claim 1 was rejected under § 112 because the preamble is contradictory to certain recitations made later in the claim by which the claim has been construed to be the combination of the shield with a riser.

Applicant requests reconsideration and withdrawal of this rejection upon examination of the re-written claim which more concisely interprets the differentiation between the shield and the riser.

Claim 5 recites the limitation "said orienting shelf" in line 7 of the claim. Claim 5 was rejected under § 112 because there was insufficient antecedent basis for this limitation in the claim.

Applicant requests reconsideration and withdrawal of this rejection upon examination of the re-written claim in which the objectionable limitation has been excluded.

Furthermore, certain limitations previously recited in Claim 6 have been merged into Claim 5 to provide a clearer, more effectively defined interpretation of the invention.

Claim 6 recites the limitation "said orienting shelf" in line 2 of the claim. Claim 6 was rejected under § 112 because there was insufficient antecedent basis for this limitation in the claim.

Applicant requests reconsideration and withdrawal of this rejection. It was determined that, based on the coverage afforded by the remaining claims, certain components of Claim 6 could be merged into Claim 5 and Claim 6 could be cancelled and thereby removed from consideration.

#### **The Claims Rejection Of Claims 1 And 2 Under 35 U.S.C. § 103(a)**

Claims 1 and 2 were rejected under § 103(a) as being unpatentable over U.S. Patent No. 4,461,423 to Davis in view of U.S. Patent No. D312,296 to Smallwood.

Davis discloses a sprinkler shield having a semicircular body with a "lower" end configured to engage a riser via a friction fit while Smallwood shows a sprinkler shield with a semicircular body with a top end enclosing the body.

Applicant requests reconsideration of this rejection for the following reasons:

Applicant had no prior knowledge of these designs during the development of submitted device.

Combination of the Davis and Smallwood designs is submitted to be improper because neither the Davis or Smallwood references contain any suggestion (expressed or implied) that they be combined, or that they be combined in the manner suggested, and one skilled in the art would have no reason to make such a combination in lieu of the components incorporated into these designs.

The Davis patent dramatically differs from applicant's device as it does not disclose a friction fit means for attaching the device to a riser that is directly integral with the spray deflecting portion of the device. Instead, the Davis design is essentially an elongated support rod configured in a hooked fashion on the lower end with a

deflector on the upper end of said rod with a brace and engaging fork located in a position along said support rod. A certain length of support rod is required to integrate both the clamping hook and the brace/engaging fork which renders this design completely dependent upon the support rod and thus eminently distinguishable from that of the applicant.

Also, the Davis design does not include the provision to shield against an upwardly directed spray as said top end does within applicant's design.

Though Smallwood's design does enclose a circularly curved deflector body with an integrated top end, it also differs dramatically from applicant's design in that it has no component, friction fit or otherwise, incorporated into the design that would provide means of attachment to a riser. A support rod is also incorporated within the Smallwood design in which said rod cannot be attached to a riser without some form of fastening apparatus which is not included in the design.

Both the Davis and Smallwood design are completely dependent on said support rods for their function as referenced in Claim 1 of the Davis patent and obvious within the Smallwood design. No such claims pertaining to applicant's device should be construed as similar or obvious.

Therefore, applicant submits that Claims 1 and 2 are allowable over the cited references and solicits reconsideration and allowance.

### **Applicant's Device Is Of Novel Structure**

Applicant submits that the same elongated support rod that both the Davis and Smallwood patents are dependent upon render these designs impractical, ineffective, or in certain situations, unusable, when used in conjunction with modern, non-commercial irrigation systems utilized within common garden areas adjacent to buildings or structures. Applicant submits the following reasons for this argument:

The elongated support rod that is an essential component of the Davis design creates a measure of standoff between the deflector shield and the sprinkler head. While this is desirable, and indeed necessary when the device is used in

conjunction with ratchet style sprinkler heads in commercial or agricultural applications, this standoff renders this device impractical or unusable in common garden applications wherein the risers are located immediately adjacent to walkways or structures.

Also, it would be virtually impossible to use the Davis design with 1" – 2" risers which are very commonly used in decorative gardens, because the length of support rod needed to utilize the device as intended would prohibit the deflector from being properly situated in relation to a sprinkler head.

Davis states in cited patent that said device is particularly suited for agricultural use wherein shields must be substantial in size and weight for use with powerful, ratchet-style sprinkler heads atop lengthy, large diameter risers. These characteristics render this design aesthetically obtrusive within multi-riser applications commonly found in decorative garden environments.

Smallwood's design is intended to be inserted into the ground adjacent to a riser and does not include any means to directly attach the device to said riser. This design is dependent upon an additional form of fastener to maintain proper relation with a riser/sprinkler head assembly so as to retain effective spray deflecting capability. This also renders the design impractical for those without the mechanical inclination or access to the necessary tools to install this device.

Applicant's device can be used with any length riser and requires no support rods or external fasteners for attachment or positioning. It offers virtually effortless installation without the need of tools or an inordinate amount of strength and combines effective spray deflection with an elegant, visually unobtrusive design.

Applicant would request the Examiner consider that while prior designs have similar intent, they are acceptably different from that of the applicant by virtue of their physical makeup and that applicant's device is of novel structure.

### **Prior Art Of Record Not Relied Upon**

Applicant has also reviewed prior art of record not relied upon in Office Action Summary. U.S. Patents issued to Ingram, Henderson, Corbett, Gaines, Balensiefer and Wampler do not show applicant's device or render it obvious.

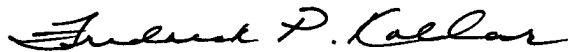
## Conclusion

For all of the above reasons, applicant submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore applicant submits that this application is now in condition for allowance, which action is respectfully solicited.

## Conditional Request For Constructive Assistance

Applicant has amended the specification and claims of this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

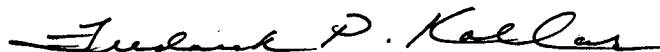


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ALEXANDRIA, VA. 22313-1450      **Attachments: Marked-Up & Replacement Specifications**



11 October, 2005

Fredrick P. Kollar, Applicant